

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

JAMES KIRK,

Petitioner,

-v-

No. 07 Civ. 7467 (LTS)(GWG)

JOHN BURGE, Superintendent, Elmira  
Correctional Facility,

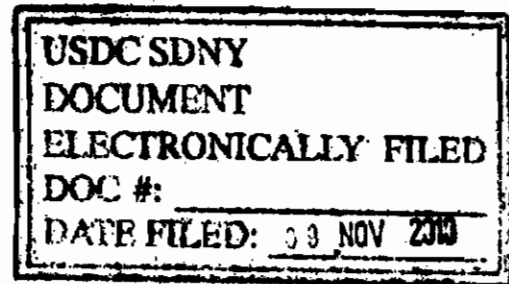
Respondent.

-----X

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Pro se Petitioner James Kirk ("Petitioner") has petitioned this Court, pursuant to Federal Rule of Civil Procedure 60(b), for relief from the dismissal of his appeal of the denial of his petition for habeas corpus relief pursuant to 28 U.S.C. § 2254. On October 19, 2010, Magistrate Judge Gabriel W. Gorenstein issued a Report and Recommendation ("Report"), recommending that Petitioner's motion be denied since it seeks review of actions of the Court of Appeals, relief that this Court has no power to grant. Neither party has made any objection to the Report, and the time to do so has elapsed.

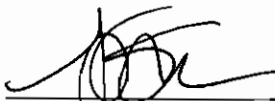
In reviewing a report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C.A. § 636(b)(1)(c) (West 2008). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wynn v. Lempke, No. 08 Civ. 3894 (RJS), 2009 WL 1227362, at \*2 (S.D.N.Y. May 5, 2009).



The Court has reviewed thoroughly Judge Gorenstein's Report and finds no clear error in his recommendation. Accordingly, the Court accepts the Report. Petitioner's motion is hereby denied.

SO ORDERED.

Dated: New York, New York  
November 9, 2010

  
\_\_\_\_\_  
LAURA TAYLOR SWAIN  
United States District Judge